

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SANDRA WOLF</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 155,949 & 155,950
<b>EVCON INDUSTRIES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>ST. PAUL FIRE &amp; MARINE INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the Order of attorney's fees of Administrative Law Judge Jon L. Frobish dated March 3, 1998, wherein claimant's attorney was granted an attorney's fee, post-award, in the amount of \$600.

**APPEARANCES**

Claimant appeared by her attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Richard J. Liby appearing for Vincent A. Burnett of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

**RECORD**

The record consists of the transcript of proceedings held February 24, 1998, before Administrative Law Judge Jon L. Frobish and Exhibit "A" to claimant's Notice of Motion for Attorney's Fees.

**STIPULATIONS**

There were no stipulations associated with this matter.

**ISSUES**

- (1) Is an award of \$600 in attorney's fees inadequate in this matter?
- (2) If the award of \$600 in attorney's fees is inadequate, what would be the appropriate post-award attorney's fees due and owing in this matter?
- (3) Does the Appeals Board have the jurisdiction to hear the appeal of this attorney's fee issue?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In reviewing the record, and in considering the arguments of the parties, the Appeals Board finds that the Order of the Administrative Law Judge should be modified.

This matter originally went to an Award on October 21, 1992. At that time, claimant was alleging an injury to her right foot and a sympathetic dystrophy condition to her lower back, allegedly resulting from this foot injury. The original Award in 1992 granted claimant benefits for the right lower extremity only. That Award was affirmed by both the Director and the Sedgwick County District Court.

Claimant's first Petition for Review and Modification was filed on July 23, 1993, approximately six months after the District Court Journal Entry. Claimant alleged her right leg had worsened and again alleged a general body injury to claimant's low back. Administrative Law Judge Shannon S. Krysl found the "scheduled vs. general body injury" issue had been previously litigated, there was no change in the right lower extremity, and denied claimant's request for review and modification. That matter was appealed to the Workers Compensation Appeals Board which affirmed the denial. Claimant moved for attorney's fees and, on September 9, 1995, Judge Krysl granted claimant's attorney \$4,000 in attorney's fees, post-award.

Several months later, on February 23, 1996, claimant again filed a Motion for Review and Modification and a request for attorney's fees, again alleging that claimant's condition had worsened and the disability had increased to the right lower extremity. Administrative Law Judge Jon L. Frobish determined that there had not been an increase in the nature and extent of claimant's disability, and denied additional award. In addition, the Administrative Law Judge determined that a reasonable amount of attorney's fees was zero.

The Appeals Board upheld the denial of increased disability, but reversed the Administrative Law Judge on the denial of attorney's fees, and remanded that issue to the Administrative Law Judge. The Administrative Law Judge based the zero amount of attorney's fees on a finding that claimant's motion was frivolous. The Appeals Board concluded that claimant's motion for review and modification was not totally frivolous, as

there was some question, however slight, that claimant's condition had worsened. There was also a dispute regarding whether the worsening condition was a natural and probable result of the original injury or was instead caused by claimant's subsequent employment.

Upon remand, the Administrative Law Judge awarded claimant's attorney \$600 in attorney's fees and denied the request for expenses in the amount of \$677.70.

In considering the totality of the evidence, including the fact that the this matter has been brought on review and modification on more than one occasion, the Appeals Board affirms the Administrative Law Judge's order of \$600 in attorney's fees, but modifies the final order and grants expenses in the amount of \$677.70.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated March 3, 1998, should be, and is hereby, modified, and claimant's counsel is awarded attorney's fees in the amount of \$600 pursuant to K.S.A. 44-528 and K.S.A. 44-536, as a reasonable amount for the merits of the claim presented, and further is awarded \$677.70 in expenses.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stephen J. Jones, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director